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RECENT DECISIONS

ACCORD AND SATISFACTION—PART PAYMENT CONDITIONED ON ACCEPTANCE AS PAYMENT IN FULL.—The plaintiff sold and delivered to the defendant a quantity of goods, a portion of which the defendant attempted to return. The plaintiff refused to accept the goods so returned, and while the matter was in dispute the defendant sent the plaintiff a check for the exact value of the goods retained but conditioned that it should be cashed only in full acceptance of all claims. The plaintiff disregarded the condition, cashed the check, and then notified the defendant of a balance due. *Held*, the condition is void. *Whittaker Chain Tread Co. v. Standard Auto Supply Co.* (Mass.), 103 N. E. 695.

It seems a generally accepted rule that where there is an unliquidated claim against the debtor an agreement to accept a smaller sum in full discharge will constitute a satisfaction for the whole claim. *Chicago, Milwaukee, etc., Ry. Co. v. Clark*, 178 U. S. 353; *Connecticut Lumber Co. v. Brown*, 68 Vt. 239, 35 Atl. 56. A majority of the courts seem to have held, contrary to the decision in the principal case, that this rule obtains even where the sum so paid was conceded by the debtor to have been due. *Tanner v. Merrill*, 108 Mich. 58, 65 N. W. 664; *Hull v. Johnson*, 22 R. I. 66, 46 Atl. 182. The court in the principal case based its decision on the lack of an express agreement by the creditor to accept the condition in the check; yet it seems settled that where a debtor tenders a check for a sum which he admits to be due, in full satisfaction of an unliquidated or disputed claim and the creditor cashes the check no secret protest will avoid the condition. *Hull v. Johnson*, *supra*; *Neely v. Thompson*, 68 Kan. 193, 75 Pac. 117. The consideration to support the payment of a sum admitted to be due in satisfaction for the whole claim is found in the prompt payment and a *bona fide* attempt to avoid threatened litigation. *Treat v. Price*, 47 Neb. 875, 66 N. W. 834. But see *contra*, *Demeules v. Tea Co.*, 103 Minn. 150, 114 N. W. 733, 14 L. R. A. (N. S.) 954.

BANKS AND BANKING—RIGHT OF HOLDER OF A CHECK TO MAINTAIN AN ACTION AGAINST THE BANK UPON WHICH IT IS DRAWN.—A bank agreed, through its president, to pay checks given by a customer in payment for live stock, if the customer would resell and deposit the proceeds in time to meet the outstanding checks. The bank, contrary to the agreement, applied the deposits upon a previous indebtedness of the depositor. *Held*, the holder of the checks has a right of action against the bank, although he did not know of the agreement. *Ballard v. Bank* (Kan.), 136 Pac. 935.

The bank had no lien on the deposits to satisfy the previous debt, as it would have had under a general deposit. *Smith v. Bank*, 147 Ia. 640, 126 N. W. 779, 30 L. R. A. (N. S.) 517. In the the normal case, a holder of a check has no right of action against the bank upon which it is drawn. This holding is based in some jurisdictions on the ground